

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PROVIDENCE ZUMBO, as Administratrix of the
Estate of JOHN ZUMBO a/k/a JOHN D. ZUMBO,

:
:
: 07-CV-6340 (LMM)
:
:

Plaintiff,

-against-

T. AND B. EQUIPMENT COMPANY, INC.,
ALLEN GEORGE ROTHENBERGER,

:
:
: **NOTICE OF MOTION**
:
:
:

Defendants.
-----X

PLEASE TAKE NOTICE, that upon the annexed declaration of Joseph P. Tucker, Esq., dated August 15, 2008 together with the exhibits annexed thereto and the accompanying Memorandum of Law, and upon all prior proceedings had herein, the undersigned will move this Court, before the Honorable Lawrence M. McKenna, U.S.D.J. at the United States District Court, located 500 Pearl Street, New York, New York for an *in limine* ruling that under New York choice-of-law rules, Connecticut has substantial interests in applying its wrongful death statute in this matter, and thus, the law of Connecticut, as the domicile of the decedent as well as the state in which Letters of Administration for the decedent's estate have been issued to Plaintiff, governs the issue of damages herein, thus permitting Plaintiff to introduce evidence of (i) the destruction of the decedent's earning capacity; (ii) the value of decedent's lost enjoyment of life; and (iii) the decedent's conscious pain and suffering. and granting such other and further

relief as to this Court may seem just and proper.

Dated: New York, New York
August 15, 2008

Respectfully submitted,

By: 

Joseph P. Tucker(JT2006)

KURZMAN KARELSEN & FRANK LLP
Attorneys for Plaintiff
230 Park Avenue – 23rd Fl.
New York, New York 10169
(212) 867 – 9500

TO: LEWIS JOHS AVALONE AVILES, LLP
Attorneys for Defendants
John E. Horan, Esq.
30 Vesey Street
New York, New York 10007
(212) 233-7195

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PROVIDENCE ZUMBO, as Administratrix of the
Estate of JOHN ZUMBO a/k/a JOHN D. ZUMBO,

Plaintiff,

-against-

T. AND B. EQUIPMENT COMPANY, INC.,
ALLEN GEORGE ROTHENBERGER,

Defendants.

:
:
: 07-CV-6340 (LMM)
:
:
:

: **DECLARATION IN**
: **SUPPORT OF**
: **PLAINTIFF'S IN LIMINE**
: **MOTION**
:
:
-----X

JOSEPH P. TUCKER, declares as follows under penalty of perjury:

1. I am an attorney and a partner with the law firm of Kurzman Karelsen & Frank, LLP and a member of the Bar of this Court. I submit this affidavit in support of Plaintiff Providence Zumbo, as Administratrix of the Estate of John Zumbo a/k/a John D. Zumbo ("Plaintiff") motion seeking a ruling that under New York choice-of-law rules, Connecticut has substantial interests in applying its wrongful death statute in this matter, and thus, the law of Connecticut, as the domicile of the decedent as well as the state in which Letters of Administration for the decedent's estate have been issued to Plaintiff, governs the issue of damages herein, thus permitting Plaintiff to introduce evidence of (i) the destruction of the decedent's earning capacity; (ii) the value of decedent's lost enjoyment of life; and (iii) the decedent's conscious pain and suffering.

2. The following documents are annexed hereto and made a part of the record in this motion.

3. Annexed hereto as **Exhibit A** is a copy of the Complaint dated July 11, 2007.

4. Annexed hereto as **Exhibit B** is a copy of Defendant's Answer dated August 28, 2007.
5. Annexed hereto as **Exhibit C** is a copy of pertinent pages of the examination before trial of defendant Allen Rothenberger dated June 11, 2008.
6. Annexed hereto as **Exhibit D** is a copy of pertinent pages of the examination before trial of Plaintiff Providence Zumbo dated May 30, 2008.
7. Annexed hereto as **Exhibit E** is a copy of pertinent pages of the examination before trial of Michael Kelly dated July 29, 2008.
8. Annexed hereto as **Exhibit F** is a copy of the autopsy report of Joh Zumbo dated July 17, 2006.
9. Annexed hereto as **Exhibit G** is a copy of the report of Plaintiff's expert Dr. Roh dated July 1, 2008.
10. This motion is based on all of the pleadings and papers already on file in this action together with:
 - a. This document and the Exhibits annexed hereto;
 - b. The Memorandum of Law filed in support of this Motion; and
 - c. The proofs of service attached to all of the documents described above.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS
TRUE AND CORRECT.

Dated: New York, New York
August 15, 2008

KURZMAN KARELSEN & FRANK, LLP

By: 

Joseph P. Tucker (JT2006)
Attorneys for Plaintiff
230 Park Avenue – 23rd Fl.
New York, New York 10169
(212) 867-9500